



## **Business Associate Agreement Health Insurance Portability and Accountability Act (HIPAA)**

This Business Associate Agreement (the “Agreement”) is made and entered into by and between DiMartino Associates Inc., a corporation organized under the laws of Washington State and having its principal address at 1301 Fifth Avenue, Suite 3701, Seattle, WA 98101 (hereinafter the “Covered Entity”) and \_\_\_\_\_ [The Business Associate] a corporation organized under the laws of \_\_\_\_\_ and having its principal address at \_\_\_\_\_ (hereinafter the “Business Associate”).

### **Recitals**

**WHEREAS**, the Department of Health and Human Services (“HHS”) has promulgated regulations at 45 C.F.R. Parts 160-164, implementing the privacy requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“Privacy Rules”);

**WHEREAS**, the Privacy Rules provide, among other things, that a covered entity is permitted to disclose Protected Health Information (as defined below) to a business associate and allow the business associate to obtain and receive Protected Health Information, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the Protected Health Information;

**WHEREAS**, Business Associate will have access to, create and/or receive certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity, thus necessitating a written agreement that meets the applicable requirements of the Privacy Rules. Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

**NOW THEREFORE**, Covered Entity and Business Associate agree as follows:

1. Definitions. The following terms shall have the meaning set forth below:
  - (a) C.F.R. “C.F.R.” means the Code of Federal Regulations.
  - (b) Designated Record Set. “Designated Record Set” has the meaning assigned to such term in 45 C.F.R. 164.501.
  - (c) HIPAA “HIPAA” shall be defined as the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Part 160 through 164.
  - (d) Individual. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. 164.501 and shall include a person who qualifies as the Individual’s personal representative in accordance with 45 C.F.R. 164.502 (g).
  - (e) Protected Health Information “Protected Health Information” shall have the same meaning as the term “Protected Health Information”, as defined by 45 C.F.R. 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
  - (f) Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. 164.501

- (g) Secretary. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by the law. Business Associate shall also comply with any further limitations on uses and disclosures agreed by Covered Entity in accordance with 45 C.F.R. 164.522 provided that such agreed upon limitations have been communicated to Business Associate according to Section 4.1(c) of this Agreement.

(b) Business associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement within 24 hours. Business Associate will take corrective action as directed by Covered Entity to prevent or minimize damage to any protected person and to prevent similar future occurrences.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access to Protected Health Information in a Designated Record Set, within twenty five (25) days of a written request from Covered Entity, to Covered Entity or, as directed by Covered Entity within thirty (30) days to an Individual, in order to meet the requirements under 45 C.F.R. 164.524. Covered Entity and Business Associate will jointly determine what constitutes “Protected Health Information” or a “Designated Record Set”, and such determination shall be final and conclusive. If Business Associate provides copies or summaries of Protected Health Information to an Individual it may impose a reasonable, cost-based fee in accordance with 45 C.F.R. 164.524 (c)(4). If Business Associate is unable to provide the Covered Entity or the Individual with access within the required time frame, Business Associate will notify Covered Entity so Covered Entity may request, in writing, an extension from the Individual.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, within forty five (45) days of a written request from Covered Entity pursuant to 45 C.F.R. 164.526, or at the request of Covered Entity, within sixty (60) days of a written request from an Individual. Business Associate shall not charge any fee for fulfilling requests for amendments. Covered Entity and Business Associate will jointly determine what constitutes Protected Health Information, and thus what information is subject to amendment pursuant to 45 C.F.R. 164.526. The determination shall be final and conclusive. If Business Associate is unable to amend the Protected Health Information within the required time frame, Business Associate will notify Covered Entity so Covered Entity may request, in writing, an extension from the Individual.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule. Business Associate will make available during normal business hours all records, books, agreements, policies, practices and procedures relating to the use and disclosure of Protected Health Information to enable the Covered Entity to determine the Business Associate’s compliance with this Agreement. Business Associate will inform the Covered Entity immediately of any audit requests received from HHS, which involve Protected Health Information related to the Covered Entity. Business Associate will maintain records for six years.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(j) Business Associate agrees to provide to Covered Entity, within forty five (45) days of a written request from the Covered Entity, an accounting of disclosures of an individual's Protected Health Information, collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. This Accounting will be provided on the form attached (see Exhibit A). If Covered Entity requests an accounting of an Individual's Protected Health Information more than once in any twelve (12) month period, Business Associate will impose a reasonable fee for such accounting in accordance with 45 C.F.R. 164.528(c). If Business Associate is unable to provide the Covered Entity with an accounting within the required time frame, Business Associate will notify Covered Entity so Covered Entity may request, in writing, an extension from the Individual.

(k) Business Associate acknowledges that it shall request from the Covered Entity and so disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted under this Agreement.

(l) Business Associate shall use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized uses or disclosures of Protected Health Information.

(m) If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with the applicable requirements of 45 C.F.R. Part 162.

### 3. Permitted Uses and Disclosures by Business Associate

#### 3.1 General Use and Disclosure

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations and services to Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

Business Associate Agrees not to use or disclose Protected Health Information for research or marketing purposes without first receiving prior written approval from Covered Entity and obtaining the necessary authorization from the Individual.

#### 3.2 Specific Use and Disclosure Provisions

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Business Associate represents and warrants that it has the right and authority to perform the services and obligations under this Agreement and such services will not violate the Privacy Rules, Covered Entity's privacy notice, or any applicable law.

(d) After 10/16/03, if Business Associate enters into any electronic transactions on behalf of Covered Entity, and such transaction falls within the definition of a Transaction under 45 C.F.R. 160.103, Business Associate agrees to conduct that transaction using prescribed HIPAA Standards. Business Associate also agrees to enter into any applicable required trading partner agreements.

#### 4. Obligations of Covered Entity.

##### 4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to that notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate, in writing, of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.

(d) Covered Entity acknowledges that it shall provide to, or request from, the Business Associate only the minimum Protected Health Information necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.

##### 4.2 Permissible Requests by Covered Entity

Covered Entity represents and warrants that it has the right and authority to disclose Protected Health Information to Business Associate for Business Associate to perform its obligations and provide services to Covered Entity, and Business Associate's use of the Protected Health Information to perform its obligations and provide services to Covered Entity requested by Covered Entity does not violate the Privacy Rules, Covered Entity's privacy notice or any applicable law. Except as may be set forth in Section 3.2, Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### 5. Term and Termination

(a) Term. The provisions of this Agreement shall take effect April 14, 2003, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the provisions in this Section.

(b) Termination for Cause. Upon the parties mutual agreement that there has been a material breach by Business Associate which does not arise from any breach by Covered Entity, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within a mutually agreeable time, or immediately terminate this Agreement if cure of such breach is not possible.

(c) If Business Associate violates a material term of the Service Agreement, Covered Entity may immediately terminate this Agreement and any related agreements pursuant to 45 C.F.R. 164.504(e)(2)(iii).

##### (c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall request, in writing, Protected Health Information that is in the possession of

subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event the Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protection of this Agreement to such Protected Health Information, limited to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(3) Business Associate agrees to extend all protections, limitations and restrictions contained in this Agreement to its use and disclosure of any Protected Health Information, and its agents or subcontractor's use and disclosure of any Protected Health Information retained after termination of this Agreement, and to limit any further uses and disclosure to the purposes that render the return or destruction of the Protected Health Information infeasible.

6. Indemnification.

Business Associate agrees to abide by all federal and state statutes and regulations concerning the confidentiality and privacy of all information, in whatever form, exchanged between the parties pursuant to this Agreement including the privacy of Protected Health Information. Business Associate shall indemnify and hold harmless Covered Entity and any of Covered Entity's affiliates, directors, officers, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of or directly relating to any non-permitted use or disclosure of Protected Health Information or other breach of this Agreement by Business Associate or any affiliate, director, officer, employee, agent or subcontractor of Business Associate.

Covered Entity shall indemnify and hold harmless Business Associate and any of Business Associate's affiliates, directors, officers, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of or directly relating to any non-permitted use or disclosure of Protected Health Information, any breach or violation of a state privacy law or rule, or other breach of this Agreement by Covered Entity or any affiliate, director, officer, employee, agent or subcontractor of Covered Entity.

7. Notices.

Any notices or communications to be given hereunder this Agreement shall be made to the address and/or fax to the fax numbers given below:

If to Business Associate, to:

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

If to Covered Entity, to:

DiMartino Associates Inc.

1301 5<sup>th</sup> Avenue

Suite 3701

Seattle, WA 98101

206.812.7556 Fax

Each party named above may change its address upon thirty (30) days written notice to the other party.

8. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, and by mutual agreement, amend the Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.

(c) Survival. The respective rights and obligations of Business Associate and Covered Entity under section 5(c)(2) and 6 of this Agreement shall survive the termination of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with the Privacy Rule. In the event of any inconsistency or conflict between this Agreement and any other agreement between the parties, the terms, provisions and conditions of this Agreement shall govern and control.

(e) No third party beneficiary. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Washington State.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

***DiMartino Associates Inc.***

By: \_\_\_\_\_

Name:

Title:

***NAME OF BUSINESS ASSOCIATE***

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT "A"**  
**Business Associate Disclosure Accounting Form**

Business Associate: \_\_\_\_\_

Submitted By: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Date of Disclosure:	
Name of member who was the subject of the disclosure:	
Member ID:	
Subscriber ID: (If different than member ID)	
Name of entity or person receiving Protected Health Information ("PHI"):	
Address of recipient (if known):	
Please provide a brief description of disclosed PHI:	
Please indicate the purpose of the disclosure:  <i>Note: The intent of this description is to inform the member of the basis for the disclosure. An alternative would be to provide a copy of the written authorization. In some circumstances, a copy of the written request for disclosure is also sufficient. See 45 C.F.R. 164.522(b)(2)(iv) for details.</i>	

PLEASE KEEP EXHIBIT "A" IN YOUR FILES.

THIS FORM SHOULD ONLY BE USED TO COMMUNICATE A DISCLOSURE THAT NEEDS TO BE ACCOUNTED FOR UNDER SECTION 164.528 OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.

If this occurs, please send this form and a copy of the authorization (if applicable) to:

WBACC Trust  
 DiMartino Associates Inc.  
 1301 5<sup>th</sup> Avenue  
 Suite 3701  
 Seattle, WA 98101